LEE SHU TUCK & ORS

v.

TOM MANAS INCORPORATED SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
[CIVIL SUIT NO: D2-22-948-1998]
28 DECEMBER 1998

CIVIL PROCEDURE: *Stay of execution - Application refused by registrar - Fresh application to judge in chambers - Whether defendant can apply again for stay or ought to have appealed against registrar's refusal - Rules of the High Court 1980, O. 56*

Upon summary judgment being ordered against them, the defendants filed a notice of intention to appeal to the judge in chambers and at the same time filed an application for stay of execution pending appeal. The application for stay was dismissed by the senior assistant registrar. The defendants then filed this application to the judge in chambers for a stay of execution. The issue before the court was whether the defendants could make another application for a stay instead of appealing against the senior assistant registrar's refusal of stay.

Held:

[1] The decision of a registrar is a decision of the High Court. When the registrar refuses a stay, it is a refusal of the High Court and thus a second application to the High Court for a stay cannot be made. The only recourse open is to seek to have the High Court decision changed and this has to be by way of an appeal from the registrar to the judge in chambers under O. 56 of the Rules of the High Court 1980.

[Application dismissed.]

Legislation referred to:
Courts of Judicature Act 1964, s. 73
Rules of the High Court 1980, O. 55 r. 12, O. 56

For the plaintiffs - TJ Su; M/s Cheah Teh & Su
For the defendants - M Nagarajah; M/s Shook Lin & Bok

Reported by S Dharmendran

JUDGMENT

Abdul Aziz Mohamad J:

On 14 July 1998 the learned senior assistant registrar ordered summary judgment against the defendants. They immediately filed a notice of intention to appeal to the judge in chambers. They also, on 14 July 1998, filed an application for stay of execution pending appeal. This the senior assistant registrar dismissed on 17 September 1998. The defendants did not appeal against the refusal of stay, but two months later, on 21 November 1998, having appointed new solicitors, they filed another application, this time to the judge in chambers, for stay of execution, along with a certificate of urgency, the nature of the urgency being that the defendants' land was due to be sold in execution by public auction on 26 November. I was, therefore, obliged to hear the application on 25 November.

The question that arose on the hearing of the application on 25 November was whether the defendants could make another application for a stay or whether they should have appealed against the senior assistant registrar's refusal of stay. The question was important to the plaintiffs, because if the defendants should have appealed instead, they had already missed the boat and it was now too late for them to get a stay.

Learned counsel for the defendants argued that the defendants need not appeal against the senior assistant registrar's refusal of stay but could apply afresh to the judge in chambers. He sought to apply by analogy the practice by which, if stay is refused by a subordinate court, the defendant applies to the High Court. The analogy is, however, inapposite because that practice is backed by O. 55 r. 12 of the Rules of the High Court 1980 which gives co-ordinate jurisdiction to the subordinate courts and the High Court in the matter of granting a stay. The same position prevails between the High Court and the Court of Appeal in the matter of stay pending appeal to the Court of Appeal. See s. 73 of the Courts of Judicature Act 1964. In those instances, two courts are involved, a lower court and a higher court. If stay is refused by the lower court, it may be sought directly from the higher court because either has jurisdiction to grant a stay.

The position is different when it comes to the question of going from a High Court registrar to a High Court Judge. There are no two courts involved. The decision of the registrar is already the decision of the High Court. When the registrar refuses a stay, it is a refusal of the High Court. A defendant cannot apply a second time to the High Court for a stay. As far as it is a matter of application, it was closed when the registrar refused the application. He had already decided as the High Court. The only recourse open to the defendants

was to seek to have the High Court decision changed and that had to be by way of an appeal from the registrar to the judge in chambers under O. 56, which the defendants were already too late to institute.

For those reasons I dismissed the defendants' application.